

## § 24. House PAYGO Rule

**§ 24.1 Where the Speaker fails to put the question of consideration for legislation containing emergency designations as required by the Statutory Pay-As-You-Go Act<sup>(1)</sup> and the (former) House PAYGO rule,<sup>(2)</sup> subsequent action on the measure renders such proceedings moot and the omission is simply noted by the Speaker.<sup>(3)</sup>**

On July 1, 2010,<sup>(4)</sup> the following occurred:

### RESTORATION OF EMERGENCY UNEMPLOYMENT COMPENSATION ACT OF 2010

Mr. LEVIN. Mr. Speaker, pursuant to H. Res. 1495, I call up the bill (H.R. 5618) to continue Federal unemployment programs, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore.<sup>(5)</sup> Pursuant to House Resolution 1495, the amendment printed in House Report 111–519 is adopted, and the bill, as amended, is considered read.

The text of the bill, as amended, is as follows:

### H. R. 5618

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Restoration of Emergency Unemployment Compensation Act of 2010”. . . .

#### SEC. 6. BUDGETARY PROVISIONS.

(a) STATUTORY PAYGO.—The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled ‘Budgetary Effects of PAYGO Legislation’ for this Act, submitted for printing in the *Congressional Record* by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.

(b) EMERGENCY DESIGNATIONS.—Sections 2 and 3—

(1) are designated as an emergency requirement pursuant to section 4(g) of the Statutory Pay-As-You-Go Act of 2010 (Public Law 111–139; 2 U.S.C. 933(g));

(2) in the House of Representatives, are designated as an emergency for purposes of pay-as-you-go principles; and

(3) in the Senate, are designated as an emergency requirement pursuant to section 403(a) of S. Con. Res. 13 (111th Congress), the concurrent resolution on the budget for fiscal year 2010. . . .

1. 2 USC §§ 931–39.
2. *House Rules and Manual* §§ 1068f, 1068j (2011)
3. *Parliamentarian’s Note*: The House’s subsequent actions (ultimately passing the bill in question) rendered moot the threshold question of consideration. The Chair’s statement regarding the omission of the question of consideration was itself incomplete, as it failed to note that Stat-Paygo (in addition to the House PAYGO rule) also required the question of consideration to be put before the House.
4. 156 CONG. REC. H5321, H5330 [Daily Ed.], 111th Cong. 2d Sess.
5. John Salazar (CO).

So the bill was passed.  
 The result of the vote was announced as above recorded.  
 A motion to reconsider was laid on the table.

#### ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Under clause 10(c)(3) of rule XXI, the presiding officer was supposed to have put the question of consideration on H.R. 5618 but omitted to do so. That omission has been overtaken by the subsequent actions on the bill.

**§ 24.2 Under former Rule XXI clause 10(c)(3),<sup>(1)</sup> when a measure contained an “emergency designation for pay-as-you-go principles,” the Speaker put the question of consideration with respect to the measure pending the House’s resolving into the Committee of the Whole for its consideration.**

On Jan. 27, 2009,<sup>(2)</sup> the following occurred:

#### AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

The SPEAKER pro tempore (Mr. [Tim] HOLDEN [of Pennsylvania]). Pending any declaration of the House into the Committee of the Whole pursuant to House Resolution 88 for the consideration of the bill, H.R. 1—which contains an emergency designation for purposes of pay-as-you-go principles—the Chair must put the question of consideration under clause 10(c)(3) of rule XXI.

The question is, “Will the House now consider the bill?”

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

#### RECORDED VOTE

Mr. [Michael] MICHAUD [of Maine]. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 224, noes 199, not voting 10, as follows:

[Roll No. 38]

**§ 24.3 Former Rule XXI clause 10,<sup>(1)</sup> which prohibited consideration of measures if the net effect of its provisions affecting direct spending and revenues increased the deficit or reduced the surplus over certain time periods, did not apply to spending provided**

1. Former Rule XXI clause 10 was replaced with a cut-as-you-go point of order in the 112th Congress. See *House Rules and Manual* §§ 1068f, 1068j (2011).

2. 155 CONG. REC. 1671, 1672, 111th Cong. 1st Sess.

1. Former Rule XXI clause 10 was replaced with a cut-as-you-go point of order in the 112th Congress. See *House Rules and Manual* §§ 1068f, 1068j (2011).

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**by appropriation acts, which were excluded from the most pertinent definition of “direct spending” (in section 250 of the Balanced Budget and Emergency Deficit Control Act of 1985).<sup>(2)</sup>**

On May 15, 2008,<sup>(3)</sup> the following occurred:

SUPPLEMENTAL APPROPRIATIONS ACT, 2008

Mr. [David] OBEY [of Wisconsin]. Mr. Speaker, pursuant to House Resolution 1197, I call from the Speaker’s table the bill (H.R. 2642) making appropriations for military construction, the Department of Veterans Affairs, and related agencies for the fiscal year ending September 30, 2008, and for other purposes, and with a Senate amendment thereto, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

The SPEAKER pro tempore (Mr. TIERNEY).<sup>(4)</sup> The Clerk will designate the Senate amendment.

The text of the Senate amendment is as follows:

Senate amendment: . . .

MOTION OFFERED BY MR. OBEY

Mr. OBEY. Mr. Speaker, I offer the motion at the desk.

The SPEAKER pro tempore. The Clerk will designate the motion.

The text of the motion is as follows:

Motion offered by Mr. OBEY:

Mr. OBEY moves that the House concur in the Senate amendment with three House amendments. . . .

POINT OF ORDER

Mr. [Paul] RYAN of Wisconsin. Mr. Speaker, I make a point of order against consideration of the measure.

The SPEAKER pro tempore. The gentleman will state his point of order.

Mr. RYAN of Wisconsin. Mr. Speaker, I make a point of order that the measure causes an increase in the deficit over a 6- and 11-year period and therefore violates clause 10 of House rule XXI, the PAYGO point of order.

Mr. Speaker, there is undeniably net direct spending included in this bill. Hence it increases the deficit. Simply by putting new entitlement spending on an appropriation bill in order to evade PAYGO would constitute a blatant loophole in the PAYGO point of order. If PAYGO is designed to prevent increases in the deficit, this measure should not be considered here today.

I therefore urge that my point of order be sustained.

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2. Pub. L. No. 99–177. At the time of this ruling, Rule XXI clause 10 contained no definition of direct spending. When the rule was changed at the beginning of the 112th Congress to the CUTGO rule, a definition of direct spending was provided by specific reference to section 250 of Gramm-Rudman-Hollings (2 USC § 900).
  3. 154 CONG. REC. 9199, 9206, 9228, 9229, 110th Cong. 2d Sess.
  4. John F. Tierney (MA).

The SPEAKER pro tempore. Does any other Member wish to be heard?

Mr. OBEY. Mr. Speaker, the gentleman may be reciting the PAYGO rule as he wishes it were, but that's not the way it is.

The legislation before the House fully complies with the PAYGO rule. That rule deals with direct spending and revenues.

As to revenues, the revenue effects of this package reduce the deficit, rather than increasing it. As to spending, none of the spending in this package falls into the direct spending category, which is basically defined as spending outside the appropriations process.

Even though not technically required to do so, the Medicaid provisions and the expansion of veterans' education benefits fully meet the PAYGO standard. Both sets of provisions contain offsets to ensure that they do not increase the deficit over the 5- and 10-year periods used by the PAYGO rule.

The rest of the bill consists mostly of emergency appropriations for defense and other security-related needs, largely for things requested by the President. And the other major spending item, relating to extended unemployment compensation benefits, is temporary in nature and responds to current hardships created by the economic downturn.

So I believe that we ought to abide by the House rules as they are, not as some Members wish they were.

The SPEAKER pro tempore. The gentleman from Wisconsin makes a point of order that the motion violates clause 10 of rule XXI by increasing a deficit.

Clause 10 of rule XXI provides a point of order against a measure if the provisions of such measure affecting direct spending or revenues have the net effect of increasing a deficit or reducing a surplus. Clause 10 of rule XXI further provides that the effect of the measure on the deficit or surplus is determined by the Committee on the Budget relative to certain estimates supplied by the Congressional Budget Office.

The gentleman from Wisconsin has asserted that the motion contains direct spending that causes an increase in a deficit. As a threshold matter, the Chair must determine if provisions in the measure affect "direct spending."

In reviewing the text of clause 10 of rule XXI, the Chair finds no definition of the term "direct spending." Because clause 10 of rule XXI is a budget enforcement mechanism, the Chair finds it prudent to look to other budget enforcement schemes for guidance in defining this term. In a review of relevant budget enforcement statutes, the Chair finds a definition of the term "direct spending" in section 250 of the Balanced Budget and Emergency Deficit Control Act of 1985, hereafter section 250. The definition in section 250 provides, in pertinent part, that "direct spending" means budget authority provided by law other than appropriation Acts.

The underlying bill, H.R. 2642, is a general appropriation bill. This measure constitutes an "appropriation Act" within the meaning of section 250. The motion proposes amendments that would make emergency supplemental appropriations for the fiscal year 2008. Accordingly, the budget authority portended by the motion does not constitute "direct spending" for purposes of section 250, and by extension, the Chair finds that the motion does not affect direct spending for purposes of clause 10 of rule XXI.

Pursuant to clause 10 of rule XXI, the Committee on the Budget is required to provide estimates to the Chair on the effect of the measure on the deficit. In consonance with the Chair's findings, the Chair is authoritatively guided by estimates from the Committee on the Budget that the net effect of the provisions of the pending motion affecting revenues and direct spending would not increase a deficit.

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Accordingly, the point of order is overruled.

**§ 24.4 A motion to recommit a bill with instructions to report “forthwith” an amendment containing revenue provisions the net effect of which would increase the deficit for a relevant period of fiscal years, as authoritatively estimated by the Committee on the Budget, was held to violate former Rule XXI clause 10<sup>(1)</sup> and ruled out of order (sustained by tabling of appeal).<sup>(2)</sup>**

On Dec. 12, 2007,<sup>(3)</sup> the following occurred:

MOTION TO RECOMMIT OFFERED BY MR. MCCRERY

Mr. [James] McCRERY [of Louisiana]. Mr. Speaker, I offer a motion to recommit. The SPEAKER pro tempore.<sup>(4)</sup> Is the gentleman opposed to the bill?  
Mr. McCRERY. I am.  
The SPEAKER pro tempore. The Clerk will report the motion to recommit.  
The Clerk read as follows:

Mr. McCrery moves to recommit the bill H.R. 4351 to the Committee on Ways and Means with instructions to report the same back to the House forthwith with the following amendment:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Tax Increase Prevention Act of 2007”.

**SEC. 2. EXTENSION OF INCREASED ALTERNATIVE MINIMUM TAX EXEMPTION AMOUNT.**

(a) IN GENERAL.—Paragraph (1) of section 55(d) of the Internal Revenue Code of 1986 (relating to exemption amount) is amended—

(1) by striking “(\$62,550 in the case of taxable years beginning in 2006)” in subparagraph (A) and inserting “(\$66,250 in the case of taxable years beginning in 2007)”, and

(2) by striking “(\$42,500 in the case of taxable years beginning in 2006)” in subparagraph (B) and inserting “(\$44,350 in the case of taxable years beginning in 2007)”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2006.

**SEC. 3. EXTENSION OF ALTERNATIVE MINIMUM TAX RELIEF FOR NONREFUNDABLE PERSONAL CREDITS.**

(a) IN GENERAL.—Paragraph (2) of section 26(a) of the Internal Revenue Code of 1986 (relating to special rule for taxable years 2000 through 2006) is amended—

(1) by striking “or 2006” and inserting “2006, or 2007”, and

(2) by striking “2006” in the heading thereof and inserting “2007”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2006.

Mr. McCRERY (during the reading). Mr. Speaker, I ask unanimous consent that the motion be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Louisiana?

1. Former Rule XXI clause 10 was replaced with a cut-as-you-go point of order in the 112th Congress. See *House Rules and Manual* §§ 1068f, 1068j (2011).
2. See also 155 CONG. REC. H14405–6 [Daily Ed.], 111th Cong. 1st Sess., Dec. 9, 2009; and 155 CONG. REC. H9570 [Daily Ed.], 111th Cong. 1st Sess., Dec. 3, 2009.
3. 153 CONG. REC. 34064–66, 110th Cong. 1st Sess.
4. Steve Israel (NY).

There was no objection.

## POINT OF ORDER

Mr. [Richard] NEAL of Massachusetts. Mr. Speaker, I make a point of order that the motion to recommit violates clause 10 of rule XXI because the provisions of the measure have the net effect of increasing the deficit over the requisite time period. The cost of 1 year of AMT relief is \$50 billion, and the motion contains no provisions to pay for that relief.

The SPEAKER pro tempore. Does any Member wish to be heard on the point of order?

Mr. McCRERY. Mr. Speaker, I do not believe it is the intent of clause 10 of rule XXI to require tax increases to pay for preventing scheduled tax increases. That is precisely what we are debating on this point of order.

If the Chair determines that this motion violates rule XXI and the House sustains this ruling, then the House is endorsing more than \$3 trillion of tax increases over the next 10 years.

PAYGO, as a budget enforcement law between 1990 and 2002, as the majority leader referred to, required automatic spending reductions across the government when budget targets were not met. Rule XXI, should it apply to this motion, is a very, very different PAYGO. It would prevent any Member from offering an amendment that prevents a tax increase without another tax increase. I would understand, and even strongly support, an interpretation of rule XXI that had the effect of requiring spending reductions to offset increases in spending.

Further, while I would not necessarily endorse it, I could understand a PAYGO interpretation that requires a spending cut or tax increase to offset any reduction in current tax rates, or an increase in any current tax deductions or credits; but that is not what we're dealing with here today, Mr. Speaker. Today, with my motion, we are simply maintaining the Federal Government's current take, so to speak, from the people.

Current individual tax rates and policies have largely been in place as they are since 2003 and have led to sustained increases in revenue to the Federal Government. In fact, the annualized increases over the last 3 years have been 14.6 percent, 11.7 percent and 6.7 percent.

Even if my motion passes and is eventually enacted, we will again see increased revenue, it is projected, to the Federal Government next year. Those who wish to apply PAYGO to my motion, those who wish to object to my motion, are advocating very clearly that they want to lock in not only the largest revenue take in history, but also the largest tax increase in history. These tax increases will lead the government to collect more than 20 percent of GDP from its citizens by the end of the decade, and far higher in the years that follow. These tax increases will be of such a dramatic magnitude that they threaten to bring our economy to its knees and render it uncompetitive in the global marketplace.

The motion I have offered contains no new spending, no new tax cuts. Instead, it simply prevents a tax increase. That, I submit, is not what rule XXI was designed to prevent. And I urge the speaker to reject the point of order.

The SPEAKER pro tempore. Does any other Member wish to be heard on the point of order?

Mr. NEAL of Massachusetts. Mr. Speaker, I insist on my point of order.

The SPEAKER pro tempore. The gentleman from Massachusetts makes a point of order that the amendment proposed in the motion violates clause 10 of rule XXI by increasing the deficit.

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Pursuant to clause 10 of rule XXI, the Chair is authoritatively guided by estimates from the Committee on the Budget that the net effect of the provisions in the amendment affecting revenues would increase the deficit for a relevant period.

Accordingly, the point of order is sustained and the motion is not in order.

Mr. McCRERY. Since that was an awfully quick ruling, Mr. Speaker, I most respectfully do appeal the ruling of the Chair because this may be the only opportunity we have to veer from this tax increase interpretation so that we can clear a bill that the Senate will pass and the President will sign.

The SPEAKER pro tempore. The question is, Shall the decision of the Chair stand as the judgment of the House?

### MOTION TO TABLE OFFERED BY MR. NEAL OF MASSACHUSETTS

Mr. NEAL of Massachusetts. Mr. Speaker, I move to table the motion to appeal.

The SPEAKER pro tempore. The question is on the motion to table.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. McCRERY. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

Pursuant to clause 8 and clause 9 of rule XX, this 15-minute vote on the motion to table will be followed by a 5-minute vote on the passage of the bill, if ordered, and if arising without further debate or proceedings in recommittal.

The vote was taken by electronic device, and there were—yeas 225, nays 191, not voting 15, as follows:

[Roll No. 1152] . . .

So the motion to table was agreed to.

## § 25. House CUTGO Rule

**§ 25.1 A point of order pursuant to Rule XXI clause 10<sup>(1)</sup> must be made prior to the consideration of a measure, and is untimely pending the question of engrossment and third reading of such measure.**

On Mar. 30, 2011,<sup>(2)</sup> immediately following the rejection of an amendment contained in a motion to recommit (but before the question on engrossment and third reading was put), a Member rose for the following point of order:

### POINT OF ORDER

Mr. [Anthony] WEINER [of New York]. Mr. Speaker, I rise to a point of order.

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1. *House Rules and Manual* § 1068f (2011).

2. 157 CONG. REC. H2079, H2080 [Daily Ed.], 112th Cong. 1st Sess.